

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Amendment of Section 73.202(b))

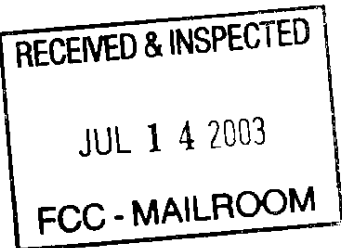
Table of Allotments,)

FM Broadcast Stations.)

(Fortuna Foothills and Wellton, Arizona))

MB Docket No. 03-163

RM-10734

**NOTICE OF PROPOSED RULE MAKING****Adopted: July 9, 2003****Released: July 14, 2003****Comment Date: September 5, 2003****Reply Comment Date: September 22, 2003**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Rule Making filed by Dana J. Puopolo ("Petitioner"), proposing the allotment of Channel 240A to Fortuna Foothills, Arizona, as the community's first local aural transmission service. In order to accommodate this allotment, the Petitioner also proposes the substitution of Channel 248A for vacant Channel 240A at Wellton, Arizona. Petitioner has stated its intention to file an application for Channel 240A at Fortuna Foothills, if allotted.

2. In support of the proposal, Petitioner states that Fortuna Foothills is a Census Designated Place ("CDP") located in Yuma County in Western Arizona. Fortuna Foothills is an incorporated community with a 2000 U.S. Census population of 20,478 persons. Fortuna Foothills is a CDP as defined by the U.S. Census. The designation of an area as a CDP raises the presumption that an area is a "community" for allotment purposes, that presumption is rebuttable.¹ Petitioner must submit additional information demonstrating that Fortuna Foothills is a "community" for allotment purposes. Community status may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural, public service, or religious organizations and services in the community.²

3. The proposal warrants consideration since the substitution at Wellton would not deprive the community of a second local service and could provide a first local service to the community of Fortuna Foothills. A staff engineering analysis indicates that Channel 240A can be allotted to Fortuna Foothills, consistent with the minimum distance separation requirements of the Commission's Rules, provided there is a site restriction 6.5 kilometers (4.0 miles) southeast to avoid a short-spacing to the license site of Station

¹ See *Stock Island, Florida*, 8 FCC Rcd 343 (M.M. Bur. 1993); *East Hemet, California, et al.*, 4 FCC Rcd 7895 (M.M. Bur. 1989); and *Hannahs Mill and Milledgeville, Georgia*, 7 FCC Rcd 3944 (M.M. Bur. 1992).

² See *Hayfield, VA*, 12 FCC Rcd 16373 (M.M. Bur 1997) and *Kenansville, Florida*, 5 FCC Rcd 2663 (M.M. Bur 1990), *aff'd.*, 10 FCC Rcd 9831(1995).

KSIQ, Channel 241B, Brawley, California.³ Since Fortuna Foothills is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested. Channel 248A can also be allotted to Wellton, Arizona, consistent with the minimum distance separation requirement of the Commission's Rules at city reference coordinates.⁴ Since Wellton is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

3. Accordingly, we seek comment on the proposed amendments of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Fortuna Foothills, Arizona	-----	240A
Wellton, Arizona	240A, 283C2	248A, 283C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **September 5, 2003**, and reply comments on or before **September 22, 2003**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, CA 90405

6. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

³ The coordinates for Channel 240A at Fortuna Foothills are 32-36-58 North Latitude and 114-21-47 West Longitude.

⁴ The coordinates for Channel 248A at Wellton are 32-40-18 North Latitude and 114-08-18 West Longitude.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁵

8. For further information concerning a proceeding listed above, contact Rolanda F. Smith, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁵ See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.